

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF ALPHA CELLULAR	)	
TELEPHONE COMPANY, A FLORIDA	)	CASE NO.
GENERAL PARTNERSHIP, FOR APPROVAL	)	92-098
OF FINANCING	)	

O R D E R

This matter arising upon request of Alpha Cellular Telephone Company ("Alpha Cellular") filed April 15, 1992 for reconsideration of the Commission's Order of April 10, 1992 denying confidential protection to certain financing documents filed by Alpha Cellular in support of its application, and it appearing to this Commission as follows:

In support of its application for approval of financing, Alpha Cellular has filed as Exhibit 3, a document entitled Working Capital Note and Purchase Price Note; as Exhibit 4, a document entitled Loan and Security Agreement; as Exhibit 5, a document entitled Mortgage, Leasehold Mortgage, Security Agreement, Fixture Filing and Financing Statement; as Exhibit 7, a document entitled System Sale Agreement; and as Exhibit 8, a document entitled Schedule of Estimated Draws and Amortization Schedule. In its original petition for confidential protection, Alpha Cellular requested that all five documents be withheld from public disclosure. The Commission by Order entered April 10, 1992 denied the petition and Alpha Cellular has requested reconsideration of

the Order for all of the documents except the Mortgage, Leasehold Mortgage, Security Agreement, Fixture Filing and Financing Statement filed as Exhibit 5.

In denying protection, the Commission found that the documents sought to be protected are normally recorded in the County Clerk's Office and made a matter of public record and therefore are not confidential. In its request for reconsideration, Alpha Cellular states that only the Mortgage, Leasehold Mortgage, Security Agreement, Fixture Filing and Financing Statement contained in Exhibit 5 will be recorded and that the remaining documents will be maintained by Alpha Cellular as confidential.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 10 categories of information. One category exempted in subparagraph (b) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

Although the cellular telephone companies operate in a competitive market, each cellular company faces only one other operator in the service areas in which they are authorized to provide service. Since every cellular company must file the same information with the Commission, no competitive advantage is gained by making that information public. Therefore, disclosure of the information is not likely to cause Alpha Cellular competitive injury and the petition should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the financing documents filed by Alpha Cellular in support of its application be and is hereby denied.

2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Order of the Commission.

Done at Frankfort, Kentucky, this 5th day of May, 1992.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

DISSENTING OPINION OF COMMISSIONER ROBERT M. DAVIS

I respectfully dissent from the decision of the majority in this proceeding. The documents sought to be protected disclose Alpha Cellular's capital costs and provide insight into the revenue Alpha Cellular's operations will need to produce in order to meet those costs. Alpha Cellular's competitors could use this information to structure their rates and market their services in a manner that more effectively competes with Alpha Cellular. The information therefore has competitive value and should be protected as confidential.



Robert M. Davis  
Commissioner  
Kentucky Public Service Commission

ATTEST:



Executive Director, Acting